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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

ROBERT N. GARFF, an individual; and
WILLIAM N. HAGLER, as Trustee for the
William N. & Jean S. Hagler Trust, a New
Mexico Trust,

Plaintiffs,

v.

XZERES CORP., a Nevada corporation,

Defendant.

Case No. 3:18-cv-00360-MO

**DECLARATION OF ROBERT N.
GARFF IN SUPPORT OF PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

I, Robert N. Garff, declare as follows:

1. In 2013, I loaned defendant Xzeres Corp. ("Xzeres") \$172,544 at a rate of 10% annual interest, to be repaid on or before October 1, 2014. The terms of the loan were evidenced by a promissory note dated April 1, 2013 (the "Note"). The Note stated that it "shall be governed by and construed in accordance with the laws of the State of Nevada without regard to conflict of law principles."

2. On August 21, 2014, Xzeres and I executed a document entitled Amendment No. 1 to Promissory Note (“Amendment No. 1”). Amendment No. 1 purported to alter the terms of the Note by extending the payment date from October 1, 2014, to October 1, 2016. Amendment No. 1 also purported to subordinate Xzeres’ indebtedness to me to a credit agreement between Xzeres and Wells Fargo Bank, N.A. (“Wells Fargo”). Other than the specified amendments, Amendment No. 1 stated that the Note otherwise “remain[ed] in full force and effect.”

3. I did not receive anything from Xzeres to benefit me, as a lender, in exchange for the amendments to the Note referenced in Amendment No. 1. Xzeres did not agree to pay me any fees, to increase the principal balance of the loan, or to pay a higher amount of annual interest. Xzeres did not provide me with anything of value in exchange for my agreement to the amendments reflected in Amendment No. 1. My agreement to these amendments was solely gratuitous.

4. On December 29, 2015, Xzeres and I executed a document entitled Amendment No. 2 to Promissory Note (“Amendment No. 2”). Amendment No. 2 purported to alter the terms of the Note by extending the payment date to an indefinite future date by only requiring payment “within 90 days following the date that the loan amounts (including principal balances up to \$15,000,000) owed by [Xzeres] to Wells Fargo and other lenders, or any successors or assignees or refinancing lenders thereof (the “Senior Loans”), are repaid in full...” Amendment No. 2 also purported to restate the subordination language from Amendment No. 1 by subordinating Xzeres’ indebtedness to me to the payment in full of all “Senior Loans” as that term was defined in Amendment No. 2. Other than the specified amendments, Amendment No. 2 stated that the Note otherwise “remain[ed] in full force and effect.”

5. I did not receive anything from Xzeres to benefit me, as a lender, in exchange for the amendments to the Note referenced in Amendment No. 2. Xzeres did not agree to pay me any fees, to increase the principal balance of the loan or to pay a higher amount of annual

interest. Xzeres did not provide me with anything of value in exchange for my agreement to the amendments reflected in Amendment No. 2. My agreement to these amendments was solely gratuitous.

6. In February of 2016, Xzeres and I executed a document entitled Amendment No. 3 to Promissory Note (“Amendment No. 3”). Amendment No. 3 purported to alter the terms of the Note by extending the payment date from October 1, 2016, to April 1, 2017. Other than the specified amendment, Amendment No. 3 stated that the Note otherwise “remain[ed] in full force and effect.”

7. I did not receive anything from Xzeres to benefit me, as a lender, in exchange for the amendment to the Note referenced in Amendment No. 3. Xzeres did not agree to pay me any fees, to increase the principal balance of the loan or to pay a higher amount of annual interest. Xzeres did not provide me with anything of value in exchange for my agreement to the amendment reflected in Amendment No. 3. My agreement to this amendment was solely gratuitous.

8. I did not sign Amendment No. 1, Amendment No. 2, or Amendment No. 3 with the expectation that doing so would increase the value or viability of Xzeres or that doing so would result in some benefit to me, nor did I have any communications with Xzeres concerning the issue of whether these amendments would increase the value or viability of Xzeres or result in some benefit to me. I signed these amendments because I was asked to and because I wanted to be accommodating.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 12, 2019.

/s/ Robert N. Garff
Robert N. Garff, Declarant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 12, 2019, a copy of **DECLARATION OF ROBERT N. GARFF IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** was filed electronically. Notice of this filing was sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's electronic filing.

- **Michael A. Ackal , III** mackal@grayreed.com,rcuddihy@grayreed.com
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- **James J. Ormiston** jormiston@grayreed.com

The undersigned further certifies that a true copy of the foregoing was served on the following parties via First Class, U.S. Mail, postage prepaid, properly addressed as follows:

None.

s/ Nicholas J. Henderson
Nicholas J. Henderson, OSB #074027
Of Attorneys for Plaintiffs